



7020-02

INTERNATIONAL TRADE COMMISSION

Certain Audio Processing Hardware, Software, and Products Containing the Same

[Investigation No. 337-TA-1026]

Commission Determination to Review-In-Part the Final Initial Determination; Schedule for Filing Written Submissions on the Issues Under Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on October 26, 2017, finding no violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice.

FOR FURTHER INFORMATION CONTACT: Amanda Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 25, 2016, based on a complaint filed by Andrea Electronics Corp. of Bohemia, New York (“Andrea”). 81 FR 73418 (Oct. 25, 2016). The complaint alleges violations of section 337 by reason of infringement of certain claims of U.S. Patent No. 6,049,607 (“the ’607 patent”), U.S. Patent No. 6,363,345 (“the ’345 patent”), and U.S. Patent No. 6,377,637 (“the ’637 patent”). The Commission’s notice of investigation named the following respondents: Apple Inc. of Cupertino, California (“Apple”); and Samsung Electronics Co., Ltd. of Gyeonggi-do, Republic of Korea, and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively, “Samsung”). The Office of Unfair Import Investigations (“OUII”) is also a party in this investigation. Samsung was previously terminated from the investigation. All asserted claims of the ’607 and ’637 patents were also previously terminated from the investigation.

On October 26, 2017, the ALJ issued her final ID finding no violation of section 337 by Apple for the ’345 patent. Specifically, the final ID found that Andrea does not have standing to assert the ’345 patent, the accused products do not infringe the ’345 patent, and Andrea has not met the domestic industry requirements.

On November 8, 2017, Andrea and OUII each filed timely petitions for review of the final ID. That same day, Apple filed a contingent petition for review of the final ID. On November 16, 2017, the parties each filed a timely response to the petitions for review. On November 27, 2017, the private parties filed their public interest comments pursuant to Commission Rule 210.50. No public interest comments were received from the public.

Having examined the record of this investigation, including the ALJ’s final ID, the

petitions for review, and the responses thereto, the Commission has determined to review-in-part the final ID. Specifically, the Commission has determined to review the ID's findings on (1) standing, (2) infringement, (3) invalidity, (4) inequitable conduct, and (5) domestic industry.

The parties are invited to brief their responses to the following question only, with reference to the applicable law and the evidentiary record.

1. Is a determination on whether a licensee is subject to an exclusive license necessary to reach the "all substantial rights" analysis? Are the factors set forth in *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336 (Fed. Cir. 2014), *judgment vacated on other grounds*, *CSR PLC et.al. v. Azure Networks*, 135 S. Ct. 1846, 2015 W1 582818 (Apr. 20, 2015), relevant to the question of standing raised in this investigation?

The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings. At this time, the Commission is not requesting written submissions on remedy, public interest, or bonding.

WRITTEN SUBMISSIONS: Each party's written submission responding to the above questions and any response to the initial submissions should be no more than 20 pages. The written submissions must be filed no later than close of business on Wednesday, January 24, 2018. Reply submissions must be filed no later than the close of business on Wednesday, January 31, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions should refer to the investigation number ("Inv. No. 1026") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*,

https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf

). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR Part 210.

By order of the Commission.

Issued: January 11, 2018.
Lisa R. Barton,

Secretary to the Commission.

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